

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 972 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASHRUMATIBEN A. SAHEBA

Versus

UNION OF INDIA

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Appearance:

MR SN SOPARKAR for Petitioner

RULE SERVED for Respondent No. 1

MR B.B. NAIK WITH MRMANISH R BHATT for Respondent No. 2

MR PRASHANT G DESAI for Respondent No. 3

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CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 26/11/98

ORAL JUDGEMENT

Per Balia,J.

The facts giving rise to this petition may be noted in brief. The petitioner has entered into an agreement to

sell the property in question for a sum of Rs. 42,73,340/-. Chapter XX-C being applicable to the petitioner, the petitioner submitted details and particulars about the same in form 37-I on 26.12.1990 as required under section 269UC. The appropriate authority made an order on 20.2.1991 deciding to purchase the property and determining the amount payable to the petitioner under section 269UD by reducing the consideration disclosed in the agreement to sell of Rs. 42,73,340/- by a sum of Rs 1,18,240/- on account of discounting the same for deferred payment of consideration and Rs. 2,45,755/- considering the amount of stamp duty and registration charges which would have to be borne by the purchaser which would have resulted in reduction of net consideration retainable by him. The petitioner challenges the order of the appropriate authority dated 20.2.1991 on the ground that the deductions have been wrongly made.

The other grievance of the petitioner is that the agreement to sell was for transfer of land at the rate of Rs. 4581/- per sq.mt. The plot was estimated to be measuring 814 sq.mts with a clear stipulation that total price thereof is to be adjusted at the aforesaid rate as per actual measurement found at the time of delivery of possession. If the land measured less than 814 sq.mts. consideration was to be reduced to that extent. If the land was found to be more than 814 sq.mts, consideration was to be increased to that extent. According to the petitioner, the land which was ultimately taken possession of by the respondents measured 847 sq.mts and to this extent, for the excess land than the estimated in the agreement to sell, the petitioner was entitled to additional amount at the rate of Rs. 4581/- per sq.mt. for the difference between 847 and 814 sq.mts. The petitioner also claimed interest on the amount paid to him at the rate of 18% which has been paid to him after possession was taken.

At the time of hearing, the learned advocate for the petitioner stated that during the course of hearing of this petition, the commission has been appointed to find out about the actual measurement of land which has been taken possession of by the respondents as a result of purchase order under Section 269UD. It was reported to the court that the respondents have acquired in fact 847 sq.mts. against consideration fixed in the agreement to sell for 814 sq.mts. only. About this, there is no dispute now. As per the direction of the court, additional consideration for additional land vesting in Union of India admeasuring 33 sq.mts. as per agreed rate

has been paid to the petitioner. In the facts and circumstances, in our opinion, as the apparent consideration is to be taken into consideration as disclosed in the agreement to sell, which itself envisages valuation on the basis of actual measurement of land at the time of delivery, the amount paid to the petitioner under the interim order of this court is in consonance with the consideration which the petitioner was otherwise entitled to and that controversy must be deemed to have come to end on deduction being made on that count.

About deductions referred to in the impugned order are concerned, it may be noticed that so far as deduction by discounting apparent consideration on account of deferred payment is concerned, the same has been held to be legitimate deduction by this court in:

(i) Pradip Ramanlal Sheth vs. Union of India, 204 ITR 866;

(ii) Shantaben Ratilal vs. Appropriate authority, 212 ITR 74;

(iii) Chandrakant Raval, vs. Union of India, 219 ITR 748;

To this extent, there is no error in the impugned order.

So far as deductions on account of expenses that the petitioner was likely to incur on account of stamp duty and registration charges are concerned, the same too are held to be impermissible deductions in the aforesaid decisions. To that extent, the order suffers from error apparent on the face of record and deserves to be corrected.

Lastly, the petitioner has urged that he is entitled to 18% interest on the ground of consideration paid to him even after possession was taken from him. As the claim to interest is not founded on statutory provision, we decline to entertain the same.

As a result, this petition partly succeeds. The order of the appropriate authority dated 20.2.1991 is set aside in part to the extent it reduces the amount of consideration payable to the petitioner by Rs. 2,45,755 on account of stamp duty and registration charges which were to be borne by him in case the sale deed was to be executed in

pursuance of the agreement to sell and consequently, we direct the respondents to pay the said sum with interest at the rate of 12% with effect from the date the amount of consideration became payable to the petitioner under section 269UF that is to say, on or before 31.3.1991 . The aforesaid amount shall be paid by the respondents by 31.1.1999 . The petitioner is also found to be entitled to additional sum for 33 sq.mts. of land @ Rs. 4,581 per sq.mt. which has already been paid to him .Hence, no fresh direction for payment of the same is needed. Rule is made absolute as above. There shall be no order as to costs.

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